

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Docket No. A7881

First named inventor: Charles BREWER R.

Group Art Unit: 2661

Application Number: 09/773,706

Examiner: David R. Vincent

Filed: February 2, 2001

REAL-TIME SATELLITE COMMUNICATIONS SYSTEM USING SEPARATE CONTROL AND DATE

Title: TRANSMISSION PATHS

Attention: Office of Petitions

MAIL STOP PETITION

Commissioner for Patents

P.O. Box 1450,

Alexandria, VA 22313-1450

FAX: (703) 872-9306

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

1. Petition fee
 - ☒ Small entity - fee \$750.00 (37 C.F.R. § 1.17(m)). Applicant claims small entity status. See 37 C.F.R. § 1.27.
 - ☐ Other than small entity - fee \$ (37 C.F.R. § 1.17(m)).
2. Reply and/or fee
 - A. The reply and/or fee to the above-noted Office action in the form of
Amendment Under 1.111, Terminal Disclaimer and Submission of Terminal Disclaimer (identify type of reply):
 - ☒ has been filed previously on November 7, 2005.
 - ☐ is enclosed herewith.
 - B. The issue fee of \$.
 - ☐ has been paid previously on .
 - ☐ is enclosed herewith.
3. Terminal disclaimer with disclaimer fee
 - ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
 - ☐ A terminal disclaimer (and disclaimer fee (37 C.F.R. § 1.20(d)) of \$_ for a small entity or \$_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).
4. STATEMENT: [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 C.F.R. § 1.137(b) was unintentional (MPEP § 711.03(c), subsections (III)(C) and (D))].
 - ☒ The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.
 - ☒ See Attached Statement.

Date: January 12, 2007

Signature

/Alan J. Kasper/

Telephone

Typed or printed name

Reg. No. 25,426

SUGHRUE MION, PLLC

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Enclosures: ☒ Fee(s) Payment (the statutory fee of \$750.00 is being charged to Deposit Account No. 19-4880 via EFS Payment Screen)
☐ Reply
☐ Terminal Disclaimer
☐ Additional sheets containing statements establishing unintentional delay

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: A7881

Charles BREWER R.

Appln. No.: 09/773,706

Group Art Unit: 2661

Confirmation No.: 7288

Examiner: David R. Vincent

Filed: February 02, 2001

For: REAL-TIME SATELLITE COMMUNICATIONS SYSTEM USING SEPARATE
CONTROL AND DATA TRANSMISSION PATHS

**PETITION UNDER 37 CFR 1.181 (a) FOR ACCEPTANCE OF ORIGINALLY FILED
REPLACEMENT AMENDMENT INCLUDING TERMINAL DISCLAIMER AND
EXTENSION FEE AND WITHDRAWAL OF HOLDING OF ABANDONMENT**

AND IN THE ALTERNATIVE

**REVIVAL OF THE PRESENT APPLICATION FROM A HOLDING OF
ABANDONMENT DUE TO UNINTENTIONAL ABANDONMENT UNDER 37
C.F.R. §1.137(b)**

MAIL STOP PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment mailed October 16, 2006, and in accordance with the provisions of 37 C.F.R. § 1.181(a), Applicant hereby petitions for a determination by the Director that the submission by Applicants of a response to an Office Action dated May 5, 2005 was timely filed on November 7, 2005 and that an appropriate constructive petition and fee were authorized to be paid for any required extension of the shortened statutory period.

Petition For New Office Action And Withdrawal Of
Holding Of Abandonment Under 37 Cfr 1.181 (a)
PCT/EP99/03853
09/773,706

BACKGROUND

The Examiner issued a first Office Action on October 18, 2004 and Applicants filed a response by facsimile on April 25, 2005, including Amendment under 37 C.F.R. § 1.111, Petition for Extension of Time under 37 C.F.R. § 1.136(a) and fee of \$510.000 by check. The Examiner issued another Office Action on May 6, 2005, holding the Amendment (1) not to be responsive since a Double Patenting rejection had not been addressed and (2) not readable due to alleged facsimile errors. A shortened statutory period of one month or thirty days from the date of mailing was set for reply, and it was expressly stated that extensions of time may be granted under 37 C.F.R. § 1.136(a). Thus, the shortened statutory period expired on June 6, 2006. Applicants responded on November 7, 2005 with (1) a fully responsive and readable amendment, including an observation that the assertion of unreadability of the earlier filed amendment was erroneous, since private PAIR showed the original documents to be clear and readable, (2) a terminal disclaimer and fee, and (3) a statement at page 10 that

“The USPTO is directed and authorized to charge **all required fees**, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.” (emphasis added)

ARGUMENT

The filing of the Amendment on November 7, 2005 was (1) timely and (2) responsive to all outstanding issues.

As to timeliness, since the mailing date of the Office Action was May 6, 2005, and since November 6, 2005 fell on a Sunday, a filing on Monday November 7, 2006 was within the statutory period of six months from the mailing date and within the five month period set in 37 C.F.R. § 1.136(a)(1). See 35 U.S.C. § 21(b).

37 C.F.R. § 1.136 permits an extension of time on the basis of a payment of a fee and a petition. A petition is constructively presumed under 37 C.F.R. § 1.136(3) in this case since the foregoing statement in the Amendment filed on November 7, 2006 is “an authorization to charge **all required fees**” and according to the provisions of the rule should be “treated as a constructive

Petition For New Office Action And Withdrawal Of
Holding Of Abandonment Under 37 Cfr 1.181 (a)
PCT/EP99/03853
09/773,706

petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.”

REQUEST FOR RELIEF

Given the existence of a responsive amendment (not disputed by the Examiner) and a constructive petition and express authorization to pay a required fee, the holding of abandonment should be withdrawn.

IN THE ALTERNATIVE, should Applicants’ petition under Rule 181 not be granted, Applicants are submitting herewith a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b). The appropriate fees are authorized and all required papers are believed to be on file in the USPTO

If there are any questions or need for additional information, please contact the undersigned at the local Washington D.C. office.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Alan J. Kasper/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Alan J. Kasper
Registration No. 25,426

Date: January 12, 2007



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/773,706

02/02/2001

Charles R. Brewer

A7881

7288

7590

10/16/2006

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037-3213

EXAMINER

MOORE, IAN N

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 10/16/2006

DOCKETED

OCT 18 2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/773,706

Examiner

Ian N. Moore

Applicant(s)

BREWER, CHARLES R.

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 06 May 2005.
 - (a) ☒ A reply was received on 07 November 2005 (with a Certificate of Mailing or Transmission dated 07 November 2005), which is after the expiration of the period for reply (including a total extension of time of 0 month(s)) which expired on 06 June 2005.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Notice of non-compliant amendment was mailed on 5/6/05 with the expiration period of 1 month (i.e. response is due 6/6/05). However, applicant filed the response on 11/7/05 with NO extension of time. Thus, applicant's response received on 11/7/06 was untimely response since it passed the expiration period of 1 month.

DORIS H. TO

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

INM
10/6/06

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.